vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.697 OF 2006

Mahadeo Narayan Gaonkar & Ors. ... Appellants

V/s.

Shankar Gaonkar & Ors. ... Respondents

Mr.S.S. Redekar for Appellants
Mr.Sudhir Prabhu for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 12, 2007**

P.C.:

. The Respondents-plaintiffs filed Suit No.133 of 1985 against the appellants for a mandatory injunction. It was pleaded that the appellants had heaped stones and constructed a wall on a cart tract, thereby preventing the respondents from enjoying the right of way. The suit has been decreed. The trial Court held that the plaintiffs had proved that they had a right of way while passing through a 12’ road along the boundary of Survey No.117 of 1999. It was also held that the plaintiffs had an easementary right in respect of the cart tract. The appellate Court confirmed the view of the trial Court. The learned Advocate for the appellants submitted that there was a public way along the path over which the plaintiffs claimed they had an easementary right.

2. Reliance is placed on the decision of the Calcutta High Court in the case of *Lal Mohammad Biswas v/s. Emajuddin Biswas & Ors.*, **AIR 1964 CALCUTTA 548** to submit that the plaintiff could not claim an easementary right on a public way. The Courts have concurrently held that the plaintiffs had a prescriptive easementary right over the 12’ road which was a cart tract. Both the Courts have also held that the 12’ wide road was partially obstructed by the appellants-defendants by heaping stones on it. Therefore, an injunction has been granted in favour of the Respondents.

3. No substantial question of law arises in this Appeal. Hence, the Appeal is dismissed.

4. In view of the dismissal of the Second Appeal, Civil Application No.2293 of 2005 does not survive and the same is dismissed accordingly.